

CONFIDENTIALITY OF LIBRARY RECORDS IN RHODE ISLAND

Since the September 11 attack on the World Trade center and the Pentagon, it has been reported that terrorists may have communicated with each other via Internet access at public libraries. During the “State of the States” program on October 2 at the New England Library Association it was noted that the wording of confidentiality of library records laws varies from state to state. Even among New England states, interpretations of these laws have varied with regard to whether the laws extend to protecting the privacy of library patrons who have registered to use public library computers. Rhode Island librarians may look to the American Library Association for guidance in formulating local policies on patron behavior and confidentiality, and to the Rhode Island General Laws for specific wording on the protection of their patrons’ rights to confidentiality.

The **American Library Association** addresses questions on the confidentiality and privacy of library records on its web site at: <http://www.ala.org/pio/crisis/qa.html>. ALA notes, “Librarians have a responsibility to protect the privacy of our patrons while responding to legitimate national security concerns.” Additionally, “**Libraries should have in place procedures for working with law enforcement officers** when a subpoena or other legal order for records is made. Libraries will cooperate expeditiously with law enforcement within the framework of state law.” However, in its policy manual online, (<http://www.ala.org/alaorg/policymanual/libserve.html>) in **52.4 Confidentiality of Library Records** it cautions library staff to “resist the issuance or enforcement of any such process, order, or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.”

In Rhode Island, the release of public records is governed by the provisions of RIGL Chapter 38-2 entitled “Access to Public Records”. This chapter was amended in the 1980s to specifically exclude library records from the definition of “public record” or “public records”.

Refer to the Rhode Island General Laws online at the following locations:
<http://www.rilin.state.ri.us/Statutes/TITLE38/38-2/INDEX.HTM>. The RI General Laws regarding libraries and access to public records is also available at:
<http://www.lori.state.ri.us/liblaws/pubacc.htm>.

Specific references of interest within Chapter 38-2 are the following:

§ 38-2-1 Purpose. – The public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society (. . .)

38-2-2. Definitions.

(4) (i) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. **For the purposes of this chapter, the following records shall not be deemed public:**

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials. (Emphasis added)

In response to local questions that have been raised about the extent of protection afforded by RIGL 38-2-2 (4)(i)(U), OLIS Administration has consulted with the Department of Administration's legal counsel. They agree that these issues are complex and that no blanket opinion can be rendered. As a result of this discussion, any law enforcement requests for either the identity and/or the substance of internet usage by the public via the computers at Rhode Island public libraries should be immediately forwarded to Matthew B. Smith, Esq., Department of Administration, One Capitol Hill, Providence, RI 02908 (401) 222-2153 or (401) 222-6381.

On October 25, 2001, Congress passed the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act" (USA PATRIOT Act.) This law broadly expands the powers of federal law enforcement agencies investigating cases involving foreign intelligence and international terrorism. The American Library Association's Office of Intellectual Freedom prepared information about the effects of the act on libraries. This statement can be found on the ALA Office of Intellectual Freedom website. (Alert: USA PATRIOT Act: <http://www.ala.org/alaorg/oif/alertusapatriotact.html>)

Anne T. Parent
OLIS Assistant Director for State Library Management Services
November 2, 2001